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NO. 85-618

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CURTIS MILLER, ET AL.,
Petitioner,

v.

HOGG BROTHERS PARTNERSHIP, ET AL.,
Respondent.

On Petition For Writ of Certiorari
To The United State Court of Appeals
for the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, WHEN THE COMPLAINT AT BEST ALLEGED A CIVIL RIGHTS VIOLATION OCCURING IN THE 1920's TO PLAINTIFFS' PREDECESSORS IN TITLE TO LAND BY THE CURRENT LANDOWNERS' PREDECESSORS' IN TITLE, AND OF WHICH PLAINTIFF AND THEIR PREDECESSORS ADMITTED THEY HAD BEEN AWARE SINCE NO LATER THAN 1939.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 2

CONCLUSION 4

TABLE OF AUTHORITIES

Cases	Page
Comstock v. Group of Institutional Investors, 335 U.S. 211 (1948)	3
Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231 (1959)	3
Rudolph v. United States, 370 U.S. 269 (1962)	3
Sanders v. Flenniken, 180 Ark. 303, 21 S.W.2d 847 (1929)	1,2,4
Walters v. Lewis, 634 S.W.2d 129 (Ark. 1982)	3,4
Williams v. Purdy, 265 S.W.2d 534 (Ark. 1954)	3
Wrinkles v. Brown, 230 S.W.2d 39 (Ark. 1950)	3

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All respondents in this case join in submitting this brief in opposition to the petition for a writ of certiorari.

STATEMENT OF THE CASE

The facts of the case underlying the petition for a writ of certiorari are as follows:

In 1925 Petitioners' predecessors in the title filed an action in chancery court to quiet title on two parcels of land in Arkansas on which oil had been discovered. As to one parcel, the chancellor dismissed Petitioners' claim as barred by laches, and the Arkansas Supreme Court ultimately affirmed. *Sanders v. Flenniken*, 180 Ark. 303, 21 S.W.2d 847 (1929). As to the other parcel, the suit was settled and dismissed with prejudice.

Petitioners now allege that an attorney hired by their predecessors engaged in fraud, misrepresentation, and conspiracy with Respondents' predecessors in title from 1922 to 1939. Petitioners also state that their predecessors "made every effort to obtain an attorney during their lifetime to represent them in this matter. ..." Plaintiffs' First Amended Complaint, ¶ XXV. Such efforts allegedly continued through the succeeding generations. No action was ever filed, however, until the present suit in 1983.

Petitioners filed their complaint in the Western District of Arkansas, El Dorado Division, in August 1983, alleging violations of federal statutes, including 42 U.S.C. §1983, and of the U.S. Constitution. The District Court applied the Arkansas "catch-all" five-year statute of limitations to the facts, finding that the statute had run since the completion of the alleged fraudulent acts in 1939 and the beginning of efforts to obtain counsel for a lawsuit. The District Court also applied the doctrine of *res judicata* to bar further litigation over the parcel covered in *Sanders v. Flenniken.* The District Court dismissed the complaint for failure to state a claim upon which relief can be granted.

The Eighth Circuit Court of Appeals affirmed the dismissal on the grounds that the statute of limitations had run and the complaint on its face showed that relief was barred.

SUMMARY OF ARGUMENT

This Court should deny a writ of certiorari because this case poses no issue of sufficient importance or concern beyond the litigants' own interests. The unique facts of this case give rise to issues only of local concern and state law on which the courts below have rendered concurrent and, therefore, conclusive findings. Under the law of Arkansas, Petitioners' claims are barred by the applicable statute of limitations, and no exception for tolling applies. In addition, Petitioners' claims to one parcel of land are barred under *res judicata* through earlier state-court litigation.

ARGUMENT

Respondents respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Eighth Circuit Court of Appeals unpublished opinion in this case. This case does not warrant discretionary review by this Court because the issue it presents is not important, based as it is on peculiar facts and the application of state law to those facts.

This Court has granted certiorari to hear cases in which, for instance, "the question is important and recurring," *e.g., Glus v. Brooklyn Eastern District Terminal*, 359 U.S. 231, 232 (1959). The peculiarity of the present facts and narrow scope of the present issue, however, insure that the result in this case is important only to the litigants, reason enough to deny the petition, *Rudolph v. U.S.*, 370 U.S. 269, 270 (1962). As discussed by the courts below, this suit involves merely a reading of Petitioners' pleadings to resolve a matter of purely local concern: whether the allegations demonstrate that the applicable state statute of limitations has expired.

Affirming the District Court's holding that the statute had long since run, the Eighth Circuit fully considered and correctly decided the statute of limitations issue. Petitioners in their application for a writ of certiorari have not met their heavy burden of showing the findings of the courts below to be incorrect. "A seasoned and wise rule of this Court makes concurrent findings of two courts below final here in the absence of very exceptional showing of error." *Comstock v. Group of Institutional Investors*, 335 U.S. 211, 214 (1948).

Here the courts below applied well-settled Arkansas law regarding the running and tolling of the statute of limitations. Arkansas case law holds that "[m]ere ignorance of one's rights" cannot toll the statute, and that in cases of alleged fraud the statute begins running "when the fraud was discovered, or should have been discovered, with the exercise of reasonable diligence." *Walters v. Lewis*, 634 S.W.2d 129, 132 (Ark. 1982), *quoting Williams v. Purdy*, 265 S.W.2d 534 (Ark. 1954); *Wrinkles v. Brown*, 230 S.W.2d 39 (Ark. 1950).

By the facts alleged in Paragraph XXV of their First Amend-

ed Complaint, Petitioners "admit they have for three generations made every effort to obtain an attorney to represent them in this matter. In other words, they have been aware of this alleged fraud for some time." Order of the District Court, August 14, 1984. Because Petitioners' cause of action accrued upon their discovery of the alleged fraud, the Eighth Circuit correctly affirmed the District Court's finding that the five-year statute of limitations had long ago expired. Nothing in the cases cited by Petitioners supports a tolling theory based only on the time it takes a party to persuade an attorney to take a case. Instead, under Arkansas law, as found by the courts below, the statute began running from the time Petitioners first knew or should have known of the alleged fraud and "were put on notice requiring them to investigate the matter," *Walters*, 634 S.W.2d at 132.

In addition, by the Arkansas Supreme Court's affirmance, in *Sanders v. Flenniken*, 180 Ark. 303, 21 S.W.2d 847 (1929), of a chancery court's adverse decision, Petitioners are barred by the doctrine of *res judicata* from asserting any claim to or interest in one of the parcels of land involved in the present case.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing instrument have been served by depositing same in the United States Mail, certified, return receipt requested addressed to Douglas Carson, Tom Daily, W.P. Hamilton, Larry Carlson and James Smedley on this _____ day of November, 1985.

_____
KEVIN T. O'HANLON